

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

HARLAND DENIS WILSON,

Appellant.

No. 37950-3-II

UNPUBLISHED OPINION

Hunt, J. — Harland Denis Wilson appeals his jury conviction for possession of a stolen motor vehicle. He argues that the evidence was insufficient to show that he possessed the stolen vehicle. We affirm.

FACTS

Tara Drury owned a green Honda Civic. It was in normal working condition, and her son's car seat was in the backseat. On March 31, 2008, she discovered that her car had been stolen from her apartment parking lot and reported it stolen to the police. Ten days later, Vancouver police saw Harland Wilson sitting in the driver's seat of a green Honda Civic parked in Leverage Park. Officer Lisa Ammerman checked the car's license plate number and received an initial report that it was stolen. When Officer Bret Olson parked his patrol car close to the Honda, Wilson exited the car and started to walk away. Olson recognized Wilson, whom he had seen earlier that day holding a cardboard sign while panhandling at a nearby intersection.

Olson exited his patrol car, asked Wilson for identification, and frisked him. Olson found

guitar strings and guitar picks in Wilson's pockets. During this patdown, the officers received radio confirmation that the Honda was a stolen vehicle. Olson then handcuffed Wilson and recited his *Miranda*¹ rights. Olson asked if Wilson understood his rights and if, with rights in mind, he wished to talk about the car. Wilson said that he understood and agreed to talk.

Wilson told Olson that a couple of days earlier, the Honda's driver had offered him a ride when he approached the car to ask for spare change, he had accepted, and the driver had left the car with him at Leverage Park. Wilson described the driver as a white male with brown hair but could not provide additional details. Wilson further stated that he had been at the park using the car for about two days and that he did not know the car's driver or whether the driver planned to return.

The Honda was severely damaged. Its ignition hung from the steering column, the door handles were damaged, the windshield was cracked, and the dashboard was slashed. Food wrappers, dirty clothing, and a plastic razor littered the car. The cardboard sign that Wilson had held while panhandling lay on the car's center console. The car's trunk contained an electric guitar with no strings and Drury's son's car seat.

Drury later identified the car as hers, but she did not own the electric guitar, the clothing, or the litter. She also noted that while the car was in normal, working condition when it was stolen, it was "trashed" when it was recovered.

The State charged Wilson with possession of a stolen vehicle. At trial, the State's witnesses testified as described above. Wilson called no witnesses. A jury found Wilson guilty as

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct 1602, 16 L.Ed.2d 694 (1966).

charged. Wilson appeals.

ANALYSIS

Wilson argues that the State did not produce sufficient evidence to prove beyond a reasonable doubt that he possessed the vehicle, contending that the State showed only that he had sat in it. We disagree.

I. Standard of Review

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence carry equal weight. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004) (citing *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). A sufficiency of the evidence challenge admits the truth of the State's evidence and inferences reasonably drawn therefrom. *Salinas*, 119 Wn.2d at 201. We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

To be guilty of possession of a stolen motor vehicle, a person must knowingly "receive, retain, possess, conceal, or dispose of" a stolen motor vehicle. RCW 9A.56.068(1); RCW 9A.56.140(1).² Possession may be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29,

² RCW 9A.56.068(1) states that "[a] person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.140(1) defines "possessing stolen property" in part as "knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen[.]" RCW 9A.56.068 implicitly incorporates RCW 9A.56.140's definition of "possessing stolen property" because the definition applies to other stolen property crimes in the same chapter and provides the *mens rea* element of the offense. See 11A

459 P.2d 400 (1969). To find actual possession, the property must be in one's personal custody. *Id.* at 29. In contrast, constructive possession requires dominion and control over the property or the premises on which it is found. *Id.* at 29-31. To possess property, a person must have actual control over it; passing, fleeting, or momentary control will not suffice. *See State v. Staley*, 123 Wn.2d 794, 801-02, 872 P.2d 502 (1994).

II. Sufficient Evidence of Possession

Based on the evidence the State produced at trial, a rational trier of fact could find that Wilson had actual possession of Drury's stolen Honda Civic. The evidence also strongly contradicts Wilson's claim that he was merely "sitting" in the Honda temporarily.

A. Actual Possession

When the police first observed Wilson, he was sitting in the Honda's driver's seat. No one else was in the car or nearby. This evidence is sufficient to establish that the Honda was in Wilson's personal custody. Moreover, substantial evidence supported the jury's conclusion that Wilson's control of the vehicle was actual, not momentary or fleeting. Wilson admitted that he had been at the park for two days and that he did not know if the person who had allegedly given him a ride and left the Honda with him planned to return. The cardboard sign that Wilson had held while panhandling earlier that day lay on the car's center console. The car's trunk contained Drury's son's car seat and an electric guitar with no strings, which did not belong to Drury. Wilson, however, had guitar strings and picks in his pocket. Food wrappers, dirty clothing, and a plastic razor, none of which belonged to Drury, littered the car. These items were circumstantial

Washington Practice: Washington Pattern Jury Instructions: Criminal 77.21, at 178 (3d ed. 2008).

evidence that Wilson had spent substantial time in the car, using it as a place to eat and to store personal belongings. We hold that this evidence is sufficient to establish actual possession.

B. Lack of Car Keys

Wilson also argues that he did not possess Drury's Honda Civic because he neither drove it nor had the keys, but merely occupied the car. He cites *State v. Plank*, 46 Wn. App. 728, 731 P.2d 1170 (1987) in support. *Plank* is inapposite.

In *Plank*, police apprehended a driver and passenger in a stolen car, attempting to cross the border from Canada into Washington. *Id.* at 729. At the driver and passenger's joint trial, the court admitted into evidence the driver's statement to police that an acquaintance had loaned them the car. *Id.* at 729-30. Witnesses testified that the passenger had made a similar statement, but his statement was not admitted into evidence. *Id.* at 730. Beyond the similarity between the driver's and passenger's statements, no evidence connected the passenger with the stolen vehicle. *Id.* Division One of our court held that the evidence was insufficient to support the passenger's conviction for possession of stolen property. *Id.* at 733.

In contrast, the record here is replete with evidence of Wilson's sole, actual, and sustained control over the stolen Honda. Unlike in *Plank*, where another person admitted driving the stolen vehicle, no one but Wilson was inside or nearby the Honda when police found him. The food wrappers, clothing, sign, razor, and guitar, combined with Wilson's testimony that he had been at the park for two days, provided strong evidence that Wilson ate and kept his personal belongings in the Honda. In light of this evidence, the lack of evidence that Wilson drove the car does not overcome the uncontroverted evidence that he actually possessed the vehicle.

Holding that sufficient evidence supported the jury's verdict finding Wilson guilty of possession of a motor vehicle, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Quinn-Brintnall, J.